

1 Vanessa R. Waldref  
2 United States Attorney  
3 Eastern District of Washington  
4 Brian M. Donovan  
5 John T. Drake  
6 Assistant United States Attorneys  
7 Post Office Box 1494  
8 Spokane, WA 99210-1494  
9 Telephone: (509) 353-2767  
10

11 UNITED STATES DISTRICT COURT  
12 FOR THE EASTERN DISTRICT OF WASHINGTON  
13

14 JEREMY OLSEN,

15 Plaintiff,

16 v.

17 XAVIER BECERRA, in his official  
18 capacity as Secretary of the United States  
19 Department of Health and Human  
20 Services,

21 Defendant.

No. 2:21-CV-00326-SMJ

RESPONSE TO PLAINTIFF'S  
STATUS REPORT RE: PAYMENT  
OF OTHER CLAIMS

22 In accordance with the Court's March 21, 2022 Order (ECF No. 34), Defendant  
23 Xavier Becerra, in his official capacity as Secretary of the United States Department  
24 of Health and Human Services, ("Defendant"), through counsel, submits the following  
25 response to Plaintiff's filing at ECF No. 35. This response is supported by the  
26 Declaration of Karen Grasso ("Grasso Decl.") and the Declaration of John T. Drake  
27 ("Drake Decl."), filed herewith.  
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## I. PROCEDURAL HISTORY

On March 1, 2022, Plaintiff made the following assertion in a reply brief filed in support of his pending preliminary injunction motion: “At the time of this filing, Plaintiff . . . has additional claims that are in the appeal process that are rejected based on CMS 1682-R.” ECF No. 22 at 10. Defendant responded to that assertion in a sur-reply brief filed on March 12, 2022. ECF No. 27. Thereafter, on March 21, 2022, the Court entered an order directing Plaintiff to substantiate his assertion that “additional claims” were being rejected. ECF No. 34. The Court’s instruction to Plaintiff was to “submit a status report detailing all pending claims that have not been paid.” ECF No. 34.

Plaintiff responded to the Court’s order on March 22, 2022. ECF No. 35. Plaintiff’s response identifies two claims: (1) a claim for reimbursement of a 90-day supply of continuous glucose monitor (“CGM”) sensors furnished to Plaintiff on October 13, 2021 (the “**October 2021 claim**”)<sup>1</sup> and (2) a claim for reimbursement of a 90-day supply of CGM sensors furnished to Plaintiff on January 24, 2022 (the “**January 2022 claim**”). ECF No. 35.

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<sup>1</sup> Plaintiff previously identified this as an “additional claim” in his reply brief.

Defendant addressed this claim at length in his sur-reply. ECF No. 27 at 4-5.

## II. RESPONSE

### A. October 2021 Claim

The October 2021 claim has been paid. The claim was paid by Noridian on December 27, 2021. Grasso Decl. ¶ 6. Payment was issued under claim number 21288839976002. *Id.* This was a new iteration of the claim number that Noridian created after it erroneously denied the claim under a prior iteration, 21288839976001. *Id.* Payment of this claim is confirmed by a remittance notice that Noridian issued to MiniMed Distribution Corp. (“MiniMed”), on December 30, 2021. Grasso Decl. ¶ 7 & Exhibit A. The remittance notice reflects that the October 2021 claim was paid under claim number 21288839976002. *Id.*

Further confirming that this claim has been paid is a Medicare Summary Notice (“MSN”) addressed to Plaintiff dated January 21, 2022. Drake Decl. Exhibit A. This MSN shows that the October 2021 claim (date of service October 13, 2021) was paid under claim number 21288839976002. *Id.* This MSN post-dates and supersedes the MSN dated November 10, 2021, that is appended to Plaintiff’s status report. ECF No. 35-1.

The November 10, 2021 MSN was issued before Noridian corrected its erroneous denial of this claim. Grasso Decl. ¶ 8. The January 21, 2022 MSN, which shows that the October 2021 claim was paid under claim number 21288839976002, reflects the current (and final) status of this claim. The January 21, 2022 MSN also refutes Plaintiff’s assertion that he “received no communication from the Secretary”

1 indicating that the October 2021 claim had been paid. ECF No. 35 at 1.

2 The additional documents Plaintiff appended to his status report have no  
3 bearing on the status of this claim. The redetermination decision dated January 6,  
4 2022 (ECF No. 35-2) was issued 10 days after Noridian paid the claim on December  
5 27, 2021. Grasso Decl. ¶ 9. The person who issued this decision on January 6 did not  
6 realize the claim had originally been denied in error, and that Noridian had corrected  
7 the error and issued payment. *Id.* Had that person known the claim had been denied  
8 in error and that payment had been issued, the appeal would have been dismissed. *Id.*  
9 The letter from Maximus Federal dated March 1, 2022 (ECF No. 35-3) is simply an  
10 acknowledgement that Plaintiff filed a request for reconsideration of Noridian's  
11 January 6 redetermination decision.  
12

13 The fact that the January 6 redetermination decision purports to deny coverage  
14 does not mean that Plaintiff is responsible for paying the October 2021 claim. Grasso  
15 Decl. ¶ 11. In fact, Plaintiff's appeal of that decision to Maximus Federal has since  
16 been dismissed because the claim has been paid. *Id.*  
17

18 Plaintiff does not seriously dispute that the October 2021 claim has been paid.  
19 To the contrary, Plaintiff acknowledges that he was able to confirm through "the  
20 Secretary's website" that this claim has, in fact, been paid. *See* ECF No. 35 at 1 ("the  
21 Secretary's website indicates" the October 2021 claim has been paid). Defendant  
22 assumes that this reference to "the Secretary's website" is to the online claim status  
23 portal at Medicare.gov, which allows Medicare participants to view the status of  
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1 reimbursement claims.<sup>2</sup> Given that Plaintiff chose not to provide a printout or screen  
2 shot of the information he obtained from the “website,” however, Defendant can only  
3 speculate about what website Plaintiff is referring to.<sup>3</sup>  
4

5 The evidence unequivocally establishes that the October 2021 claim has been  
6 paid. The Court should disregard any suggestion that this claim was or continues to  
7 be denied at the administrative appeal level pursuant to CMS 1682-R. The Court  
8 should likewise disregard Plaintiff’s claim that he “must keep appealing” in order to  
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11 <sup>2</sup> The URL for the claim status portal is <https://www.medicare.gov/account/login/>.

12 This portal allows Medicare participants to “check the status of Medicare Part A  
13 (Hospital Insurance) or Medicare Part B (Medical Insurance) claims” by creating a  
14 username and password and logging into their account. *See* “Claims & Appeals,  
15 Check the Status of a Claim,” available at: [https://www.medicare.gov/claims-](https://www.medicare.gov/claims-appeals/check-the-status-of-a-claim)  
16 [appeals/check-the-status-of-a-claim](https://www.medicare.gov/claims-appeals/check-the-status-of-a-claim) (last visited March 22, 2022).  
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19 <sup>3</sup> If Plaintiff is indeed referring to the online claim status portal at Medicare.gov, there  
20 is reason to believe that Plaintiff could have quickly and easily determined that the  
21 two claims at issue in this case—the April 2019 and March 2021 claims—were paid  
22 back in July 2021, months before this lawsuit and the instant preliminary injunction  
23 motion were filed. There is also reason to believe that Plaintiff knew, or should have  
24 known, that his allegations of continued bad faith by the Secretary and the Secretary’s  
25 counsel are completely meritless.  
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1 avoid being liable for payment. ECF No. 35 at 3. That claim is factually inaccurate  
2 for the reasons addressed above, and is further foreclosed by the Secretary's recent  
3 issuance of TDL-220257. *See* ECF No. 20-1 (TDL directing MACs like Noridian to  
4 provide coverage for this type of CGM claim, even if claim is in the administrative  
5 appeal process).

7 B. January 2022 Claim

9 The January 2022 claim has been paid. The claim was paid by Noridian on  
10 February 2, 2022. Grasso Decl. ¶ 12. Payment was issued under claim number  
11 22027829096000. *Id.* Payment of this claim is confirmed by a remittance record  
12 dated February 10, 2022, which shows that the claim was paid under claim number  
13 22027829096000. Grasso Decl. ¶ 13 & Exhibit C.

15 Payment of this claim is also reflected in an MSN addressed to Plaintiff dated  
16 February 18, 2022. Drake Decl., Exhibit B. This MSN shows that the January 2022  
17 claim was paid under claim number 22027829096000. *Id.* This MSN directly  
18 contradicts Plaintiff's assertion that he "has received no communication from the  
19 Secretary approving or rejecting this claim." ECF No. 35 at 2. The MSN clearly  
20 reflects that the claim was allowed.

23 As with the October 2021 claim, Plaintiff acknowledges that he was able to  
24 confirm through "the Secretary's website" that this claim was paid. *See* ECF No. 35  
25 at 2 ("the Secretary's website indicates it [the January 2022 claim] has been paid").  
26 Given that Plaintiff was able to confirm through the "website" that this claim has been  
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1 paid, and given that this claim has never been the subject of an administrative appeal,  
2 it is unclear why Plaintiff is talking about it in response to an order directing him to  
3 “detail[] all pending claims that have not been paid.” ECF No. 34. In any event, the  
4 claim has been paid, and it has no bearing on the instant preliminary injunction motion  
5 or any other aspect of this case.  
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7 DATED this 24th day of March, 2022.  
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9 Vanessa R. Waldref  
10 United States Attorney

11 s/John T. Drake  
12 Brian M. Donovan  
13 John T. Drake  
14 Assistant United States Attorneys  
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 24, 2022, I caused to be delivered via the method listed below the document to which this Certificate of Service is attached (plus any exhibits and/or attachments) to the following:

<b>NAME &amp; ADDRESS</b>	<b>Method of Delivery</b>
Roger Townsend BRESKIN JOHNSON TOWNSEND 1000 Second Ave., Suite 3670 Seattle, WA 98104	<input checked="" type="checkbox"/> CM/ECF System <input type="checkbox"/> Electronic Mail <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Other: _____
James Pistorino PARRISH LAW OFFICES 788 Washington Road Pittsburgh, PA 15228	<input checked="" type="checkbox"/> CM/ECF System <input type="checkbox"/> Electronic Mail <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Other: _____

s/John T. Drake  
John T. Drake